

IN THE UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF MISSOURI  
 WESTERN DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) No. 2:22-cv-04022  
 ) July 6, 2022  
 v. ) Kansas City, Missouri  
 ) CIVIL  
 STATE OF MISSOURI, )  
 )  
 Defendant. )

TRANSCRIPT OF ORAL ARGUMENT  
 BEFORE THE HONORABLE BRIAN C. WIMES  
 UNITED STATES DISTRICT JUDGE

Proceedings recorded by electronic voice writing  
 Transcript produced by computer

APPEARANCES

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 United States Court Reporter

1                                July 6th, 2022

2                    THE COURT:    Good afternoon.    Let the Court call the  
3 case.    This is United States versus state of Missouri, Case  
4 No.    22-cv-04022.    Can I have parties enter their appearance  
5 for the record, please.    I'll start with the government.

6                    MS. SNYDER:    Good afternoon, Your Honor.    Cassie  
7 Snyder with the Department of Justice on behalf of the United  
8 States.    And with me I have Daniel Schwei.

9                    THE COURT:    Daniel, can you spell the last name?

10                   MS. SNYDER:    Sure.    S-C-H-W-E-I.

11                   And I also have Alan Simpson with the US attorney's  
12 office.

13                   THE COURT:    Okay.    Thank you.

14                   And the lone attorney for the state of Missouri.  
15 Can I have your name?

16                   MR. TALENT:    Good afternoon, Your Honor.

17                   Michael Talent for the state of Missouri, the  
18 governor, and the Attorney General's estate as well.

19                   THE COURT:    Good afternoon, Mr. Talent.

20                   Let me tell you how the Court plans on proceeding.  
21 What I want to do is give the parties the opportunity to make  
22 the argument to the Court.    Obviously, there will be some  
23 questions throughout.    My intent is to give each side 30  
24 minutes -- well, 20 minutes, and then I will give you the  
25 opportunity for any rebuttal.    Then I will probably step off

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1 the bench, after both arguments to gather my thoughts. If I  
2 have any additional questions in the final ten minutes or if  
3 you want to address any of the arguments made by the other  
4 side that you think are most relevant to the Court in making  
5 this determination.

6 With that said, why don't the United States as the  
7 movant, Ms. Snyder.

8 MS. SNYDER: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 MS. SNYDER: Cassie Snyder with the Department of  
11 Justice on behalf of the United States.

12 The federal government filed this action because  
13 H.B.85 poses substantial threat to public safety and does so  
14 in a manner that squarely violates the United States  
15 Constitution. Since the enactment of H.B. 85 it has become  
16 harder for federal law enforcement to investigate violent  
17 crime and to share evidence. Some state and local law  
18 enforcement agencies are no longer inputting ballistics data  
19 into national databases. The state information fusion center  
20 has stoped working with us. And the Kansas City Police  
21 Department has stopped testing firearms. That all makes it  
22 harder to investigate violent crimes at the front end which  
23 must happen before the government can even decide what  
24 possible federal or state charges it may bring.

25 THE COURT: Let me ask you, it seems when I was  
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1 reviewing the briefing it's the argument of the Supremacy  
2 Clause. And what this statute does is to nullify federal law  
3 and you site to two statutes in which it nullifies. Does it?  
4 Let me ask this question in this sense, what it says is that  
5 we will not have law enforcement officials at the state level  
6 in essence assist the federal government and the carrying out  
7 of those federal laws.

8 MS. SNYDER: Yes, Your Honor, it does nullify  
9 federal law. This is not just a law about the federal  
10 government forcing the state to use state resources to enforce  
11 federal law. That's not what this is about. That, of course,  
12 is protected under the Tenth Amendment under the anti  
13 common-dearing doctrine. In particular the principle in  
14 prince, which states that Congress shall pass no law that  
15 requires either the state legislature or state officials to  
16 enact or enforce a particular regulatory scheme. That is not  
17 what is happening here. Rather, the state has passed a law  
18 that not only purports to nullify federal law. In particular,  
19 the National Firearms Act and the Gun Control Act, but then  
20 operational that nullification in later provisions. So, for  
21 example, imposing a duty on courts and law enforcement  
22 entities to protect against these federal gun laws as  
23 described in Section 1.420. Penalizing the use of federal  
24 authority in the Civil Penalty Act. This is not a case where  
25 the federal government has passed a law that is requiring the

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1 state to take any particular action. Rather, the state's law  
2 H.B.85 is affirmatively interfering with and discriminating  
3 against the use of federal authority. In particular, many  
4 informs information sharing that the state once considered to  
5 be an established practice is no longer happening. So as I  
6 stated, no longer inputting ballistics information, refusing  
7 to test firearms, even assuming that these statutes provisions  
8 only apply to state and local entities, which we do not  
9 believe is true, but even assuming that --

10 THE COURT: -- why don't you believe it's true? Why  
11 don't you believe that it only applies to that? It seems like  
12 the argument, and I'll talk to counsel, that it just applies  
13 to Missouri. They're saying -- at least part of what I'm  
14 reading, my understanding again, is that, well, we don't  
15 believe -- we are not suggesting in anyway usurping federal  
16 statute, you still can enforce, but it will not -- it will not  
17 be with the cooperation of the law enforcement of the state of  
18 Missouri.

19 MS. SNYDER: Only to look is at both the tangible  
20 effects of this law, and of the plain language of this law.  
21 So in regards to tangible effects, for example, task force  
22 officers are being limited not only in participation in task  
23 forces but also in the types of federal law that they can  
24 enforce while serving on task forces. So of course task force  
25 officers are state and local law enforcement officials who

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1 have deputized with federal authority, and when they serve on  
2 task forces they act with federal authority. The Missouri  
3 State Highway Patrol has instructed many of task force  
4 officers that they can only enforce certain types of federal  
5 laws when acting as federal task force officers. So you see a  
6 direct regulation of federal government in that sense. Also  
7 looking -- to return to your initial question, looking at just  
8 the text of the statute, nothing in the text of the statute  
9 actually limits this to state and local officials. The  
10 language of the statute says no entity or person shall have  
11 the authority to enforce these laws, the civil penalty schemes  
12 impose penalties on any political subdivision or law  
13 enforcement entity. So just the plain text of the statute  
14 applies both to state and federal entities.

15 THE COURT: But what if they just modify or amend  
16 the part to take out just the entities or kind of that broader  
17 language and make it more specific to subdivisions of  
18 Missouri. That still wouldn't change the argument would it,  
19 for you?

20 MS. SNYDER: Right.

21 THE COURT: That would change that part of the  
22 argument, because now we have plain language that I know you  
23 interpret as being broader than simply just law enforcement  
24 for the state of Missouri, it would be arguably applicable to  
25 federal agents. Say you take that part out, that doesn't

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1 change your argument, does it?

2 MS. SNYDER: Exactly, Your Honor. It does not  
3 change the argument for two reasons. First, it would still  
4 apply to these task force agents who are still state and local  
5 officials. They simply serve with federal authority. That is  
6 the first reason. Moreover, we still see the tangible affects  
7 of this law affirmatively discriminating against the use of  
8 federal authority. So again, the civil penalty scheme  
9 penalizing federal officials for using federal authority,  
10 penalizing state employees for using federal authority. In  
11 particular 1460 and 70 impose hefty substantial monetary  
12 penalties on any political subdivision and law enforcement  
13 agency. And again, even assuming that that is only state and  
14 local entities, any of them that either employ an individual  
15 who enforces or attempts to these federal laws or who hires an  
16 individually who has previously enforced these laws. So  
17 effectively barring federal officials from employment with the  
18 state. And that is a direct regulation of federal 3, direct  
19 interference with federal authority. You will also see the  
20 state withdrawing certain forms of information sharing in a  
21 discriminatory manner. The doctrine of intergovernmental  
22 says, no state can discriminate against the federal government  
23 on the basis of governmental status. That is exactly what is  
24 happening here. You have these long standing practices of  
25 information sharing, and suddenly with the enactment of H.B.85

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1 those practices have been withdrawn. Our federal partners are  
2 saying, the state and local partners are saying because of  
3 H.B.85 we are no longer able to share information with you.

4 THE COURT: Have there been any other states that  
5 have taken the position or any similar position to that of the  
6 state of Missouri in terms of any legislative or any  
7 enactments by any other state legislatures who have been  
8 imposed like or similar statutes as this one?

9 MS. SNYDER: There have been a couple of other  
10 states who have imposed similar laws, similar anti-federal  
11 firearms laws. Some of them are more abstract. H.B. 85 is  
12 unique in that it imposes, again, these really affirmatively  
13 interfering provisions. So it's not only the central  
14 notification scheme, but operationalizing that nullification  
15 by imposing penalties on federal officials, imposing a duty on  
16 courts and law enforcement to protect against these laws,  
17 prohibiting any person or entity from enforcing these laws.  
18 But there have been some other laws that are similar. Those  
19 laws have been held preempted where sort of comparably have  
20 been held to not constitute a defense against a federal  
21 firearms conviction for the reason that states cannot nullify  
22 federal firearms laws.

23 So you have Montana. Montana held a comparable law  
24 to be preempted by federal firearms law. The Tenth Circuit  
25 held that Kansas, Kansas' is similar -- it is actually called  
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1 SAPA as well, they held that law to be not a defense against a  
2 federal firearms conviction because states cannot nullify  
3 federal law. And we have actually seen H.B. 85 addressed in  
4 courts within Missouri, so both the Eastern District and the  
5 Western District in the context of criminal cases have held  
6 that H.B. 85 is preempted by federal firearms law.

7 THE COURT: I think you might've cited that, you  
8 said from the Western District. Was that a Judge Ketchmark  
9 opinion or she adopted that from one of our magistrates I  
10 think?

11 MS. SNYDER: Yes, it was definitely an adopted  
12 recommendation. I couldn't tell you the judge's name off  
13 hand.

14 THE COURT: I think it was. Thank you.  
15 Go ahead.

16 MS. SNYDER: I'd like to return to the central  
17 nullification provision in-states 1.420.

18 THE COURT: Sure.

19 MS. SNYDER: Again, states cannot nullify federal  
20 law. This is a fundamental principle, it goes all the way  
21 back to McCulloch v. Maryland. You saw the Supreme Court  
22 expressly reject the nullification doctrine in Copper v. Aaron  
23 when southern state legislatures attempted to nullify Brown v.  
24 Board of Education.

25 Supreme Court has just repeatedly and emphatically  
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1 emphasized states cannot nullify federal law and states cannot  
2 impose their own interpretation upon federal law. Their own  
3 interpretation of the constitution on federal law. That is  
4 exactly what H.B. 85 purports to do. The central  
5 nullification scheme declares that these broad categories of  
6 federal firearms laws are nullified and then the remaining  
7 provisions, as I say, operationalize that nullification. And  
8 that overrule nullification scheme is what violates both the  
9 Supremacy Clause and long-standing Supreme Court precedent.

10 THE COURT: And so you're talking the scheme, just  
11 clarify that for this the Court. I think I know what you're  
12 saying but I just want to make sure I'm understanding that  
13 correctly.

14 MS. SNYDER: Yes. So the scheme is really how all  
15 these provisions interact. You have the central nullification  
16 sort of premise or effort in 1.420, and all of the other  
17 provisions are necessarily dependent upon that premise. They  
18 all explicitly cross-reference back to that scheme except I  
19 believe 1.430 which sort of implicitly cross-references back  
20 to 1.420.

21 THE COURT: And that is why you say it is  
22 non-severable?

23 MS. SNYDER: Exactly.

24 THE COURT: But you're saying even if -- isn't there  
25 a provision within that statute I thought I read that it's

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1 severable?

2 MS. SNYDER: There is a provision that sort of  
3 mirrors Missouri's severability rule.

4 THE COURT: Yeah.

5 MS. SNYDER: Yeah, exactly. That severability rule,  
6 it's a two part test. The first part is once we find the  
7 unconstitutional provision to be invalid are the remaining  
8 provisions still complete and susceptible of constitutional  
9 enforcement?

10 THE COURT: Okay.

11 MS. SNYDER: And then second part of this test is  
12 again, taking away the unconstitutional provision, would the  
13 remaining provision still have been enacted by the Missouri  
14 state legislator? And H.B.85 fails on both of these prongs.  
15 We can see that none of these provisions would be complete  
16 without the central nullification provision because none of  
17 them make sense. They don't simply cross-reference back to  
18 1.420, they are necessarily dependent upon 1.420. The duty,  
19 for example, in 1.440 makes no sense without reference to what  
20 that duty means in 1.420. The civil penalty schemes can't be  
21 brought against anybody unless you know that they can be  
22 brought for the enforcement of these federal firearms laws in  
23 1.420. So all of these provisions necessarily refer back to  
24 1.420.

25 THE COURT: Okay.  
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1 MS. SNYDER: It's worth also mentioning very quickly  
2 that this is not a case about the Second Amendment. This is a  
3 case about the Supremacy Clause. Missouri does not attempt to  
4 justify its nullification attempt on controlling precedent  
5 regarding the Second Amendment. Nothing in either the text of  
6 H.B.85 or in any of the state's briefly justifies this  
7 nullification based on actual controlling Second Amendment  
8 precedent. This is instead a case about Missouri trying to  
9 interpose its own interpretation upon federal firearms laws.  
10 Its own interpretation of the Second Amendment.

11 And just to kind of review some of these tangible  
12 harms that we've already talked about. Based on these  
13 tangible harms we know that these provisions are far more than  
14 just simply some abstract declaration of policy by the state.  
15 Again, we know this because the tangible harms that this  
16 statute has already imposed, the restriction of information  
17 sharing in a discriminatory manner, the withdrawal of task  
18 force officers, the limitations on the types of federal  
19 authority that task force officers can wheeled. So really  
20 these are, these provisions are imposing affirmative rights  
21 and obligations on the citizens of Missouri.

22 We also know just this just based on Missouri's  
23 statutes -- sorry -- statutory interpretation. The Missouri  
24 state legislature shall not be presumed to have inserted  
25 verbiage in its statutes. And it shall be presumed to have

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1 meant every word that it says. So looking at these provisions  
2 we know just based on the plain language they are, the plain  
3 language is affirming, affirmatively imposing duties and  
4 obligations. If they were merely declaratory, they would be  
5 declaring the same thing over and over again.

6 H.B.85 also independently violates the doctrine of  
7 intergovernmental immunity which we briefly mentioned already.  
8 This doctrine prevents states from passing any law that either  
9 regulates the United States directly or discriminates against  
10 the federal government or those with government deals, so for  
11 examples, employees, contractors. And we just saw a great  
12 example of the doctrine of intergovernmental immunity applied  
13 a couple weeks ago by the Supreme Court in the United States  
14 for Washington. We filed a short supplemental brief on this  
15 case. That case confirmed that a state law violates this  
16 doctrine if it singles an individual or entity out for less  
17 favorable treatment or if it regulates them unfavorably based  
18 on their governmental status.

19 And H.B.85 specifically violates this doctrine in  
20 three general ways. It's also worth noting the state does not  
21 dispute any of these facts on the merits. First of all,  
22 H.B.85 penalizes federal officials and those who act with  
23 federal authority. Again, we see this in the civil penalty  
24 scheme which effectively bars former federal officials of  
25 employment with the state. Imposing this unique disability on

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1 federal officials by attaching liability only to the exercise  
2 of federal authority and not to comparable state authority.

3 The second way that H.B 85 violates the doctrine of  
4 intergovernmental immunity is by denying federal authority to  
5 enforce federal law. And again, you see this in overlapping  
6 provisions in H.B.85. 1.440 imposing a duty on the courts and  
7 law enforcement agencies of this state to protect against the  
8 federal firearms laws nullified in 1.420. 1.450 saying that  
9 no person or entity. Again, the plain language of this. No  
10 person or entity encompasses federal persons and federal  
11 entities. And again, as we already discussed, even if this  
12 applies only to state agencies, you still run into the problem  
13 of regulating task force officers.

14 And the third way that H.B.85 violates the doctrine  
15 of intergovernmental immunity is through restricting  
16 information sharing in a discriminatory manner. And we know  
17 first of all, that information sharing is different from a  
18 Tenth Amendment prospective based on Reno v. Condon, and then  
19 we also have these defendants refusing, discriminatorily  
20 refusing to share information only with the federal  
21 government, not with comparable state authorities.

22 I'd like to also discuss conflict preemption. The  
23 express purpose of this statute is nullification, and  
24 therefore, H.B. 85 acts as an obstacle to the accomplishment  
25 and execution of the full purposes and objectives of Congress.

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1 In particular, again, it conflicts with the National Firearms  
2 Act and the Gun Control Act. And again, multiple courts have  
3 confirmed this preemption.

4 For those reasons this Court should enter an  
5 injunction baring Missouri and its officials from enforcing  
6 H.B.85.

7 THE COURT: Thank you, counsel.

8 Mr. Talent.

9 MR. TALENT: Good afternoon, Your Honor. Michael  
10 Talent representing the state defendants.

11 I will confess to being a bit at a loss here because  
12 the United States has come to this Court and said that SAPA,  
13 the Second Amendment Preservation Act, or H.B. 85, denies the  
14 federal government authority to enforce federal law. And that  
15 I think is the crux of this case. Because that is the basis  
16 from which their nullification argument, their supremacy  
17 argument flows. And as the Court noted in its questions to  
18 counsel, the state takes a different position. That SAPA  
19 simple effects state entities, SAPA implements the state  
20 policy position provides state resources to the federal  
21 government, to enforce and implement federal laws and policies  
22 that infringe on the fundamental right according to state of  
23 law.

24 THE COURT: Isn't the state of Missouri making some  
25 interpretation of the Second Amendment? This isn't a Second  
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1 Amendment issue. Would you agree? Do you understand what I'm  
2 saying? Part of their argument, at least as I understand it,  
3 I'm sure counsel will come back up and maybe clarify for the  
4 Court. But my position is this, it is you making some level  
5 of determination of an interpretation of the Second Amendment,  
6 are you not?

7 MR. TALENT: The general assemble is, Yes, Your  
8 Honor. And there is also embodied in the state constitution.  
9 I think you're getting to the government's quote. And I think  
10 that this is a direct quote from my friend on the other side.  
11 "That states cannot impose their own interpretation of federal  
12 law." That states can't interpret federal law. That is not  
13 consistent with the constitutional structure. This is kind of  
14 an overarching I think federalism structural issue. States  
15 are constitutional actors. They take an oath to interpret the  
16 Constitution. They have to implement the Constitution when  
17 they engage and create policy. So the state of Missouri has a  
18 right and yet creates, for example, its own firearm criminal  
19 laws, and the state has such laws to determine whether those  
20 laws are consistent with the Second Amendment.

21 THE COURT: They can't preempt federal law.

22 MR. TALENT: They can't preempt federal law. And  
23 that's where we get to the question about what SAPA means.

24 THE COURT: Right.

25 MR. TALENT: And this is the crux. The government  
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1 says SAPA denies the federal government the right to enforce  
2 federal law, the state says, SAPA simply alters how the state  
3 can state resources. State resources don't go to the federal  
4 government to help the federal government enforce federal law  
5 which my friend concedes is constitutional under Printz. The  
6 state has the better of the argument and Missouri Supreme  
7 Court has said so. In City of St. Louis v. State reported at  
8 Volume 643 S.W.3d, this is location site 297 and 298. The  
9 Missouri Supreme Court has provided an interpretation of SAPA  
10 that is consistent with how the state has interpreted the law.  
11 And I quote, SAPA's first four sections -- so that's Sections  
12 410 to 440, contain legislative findings and declarations. It  
13 is truly declaratory as this state as argued. SAPA's five  
14 remaining sections, so that's Sections 1.450 through 485  
15 comprises substantive provisions to enforce its legislative  
16 declarations. Section 1.450 removes from Missouri entities,  
17 persons, public officers, state employees and political  
18 subdivisions, the authority to enforce or attempt to enforce  
19 any federal gun law, infringing on the right to keep and bear  
20 arms as described under 1.420. So contrary to what my friend  
21 came up here and said, 1.450 does not enforce a duty on  
22 federal law enforcement. Sections 1.460 and 1.470, the  
23 Missouri Supreme Court continued.

24 THE COURT: Sure it does, if a state which is  
25 commonly held practice my understanding, if a state law  
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1 enforcement officer, they have a designation with federal  
2 authority, I think it is impacting, is it not?

3 MR. TALENT: I think that gets to the question of  
4 whether the state is providing state resources to implement  
5 federal policy. And then the question then the government  
6 doesn't provide any evidence for those deputations. Those  
7 deputations carry with them a vested right to that  
8 cooperation. Basically a vested right for Missouri law  
9 enforcement entities to implement these aspects of federal law  
10 enforcement, federal firearms policy and federal firearms law.

11 THE COURT: Isn't for the safety of the community at  
12 large though? That's why they have worked together, they have  
13 always done that. Have they not?

14 MR. TALENT: Yes, Your Honor. And they continue to  
15 work together.

16 THE COURT: They can't. They can't. They can't.  
17 Because what the statute says, if you do there are  
18 consequences for that. So the effect of it, has a chilling  
19 effect on any law enforcement officer who may be this  
20 designation state and also federal task force -- it has a  
21 chilling effect. Why? If you do it then you can be liable  
22 for up to \$50,000 -- I think that's the language. Or it can  
23 impact you for further employment. Could it not?

24 MR. TALENT: No, actually that's not quite right.

25 THE COURT: Okay.  
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1 MR. TALENT: So the civil enforcement provisions  
2 that you were discussing aren't penalties on an individual  
3 officer. They are imposed -- and this is again from the  
4 Missouri Supreme Court, they're imposed on state political  
5 subdivisions and law enforcement agencies. So as structure of  
6 the law, the law is not penalizing any individual officer for  
7 engaging in any individual act.

8 THE COURT: Okay. It is penalizing Missouri State  
9 Highway Patrol?

10 MR. TALENT: The liability would in this case run to  
11 whatever political subdivision or entity.

12 THE COURT: Therefore, what are they not going to  
13 do? I'm not going to deputized or have someone act in the  
14 capacity. You can bring it down to the individual or you can  
15 make it to the subdivision, but the point is this, it has a  
16 chilling effect on the ability to effectuate federal law.

17 MR. TALENT: The underlying premise of that though,  
18 Your Honor, is that the state must effectuate federal law.  
19 And Printz says the state doesn't have to do it. So the state  
20 is allowed to tell the Highway Patrol for any reason to be  
21 quite honest under Printz -- Printz did not turn on the  
22 underlying constitutionality, either the Brady Act or the  
23 underlying validity of the state law at issue. The state is  
24 allowed to tell the Missouri Highway Patrol that as a matter  
25 of policy, you will not go and enforce these gun laws.

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1 THE COURT: Right.

2 MR. TALENT: And that's all that SAPA does, and  
3 that's what the Missouri Supreme Court says. SAPA is not a  
4 regulation on the federal government. And that really --

5 THE COURT: You really didn't answer my question  
6 though.

7 MR. TALENT: Does it show?

8 THE COURT: Yes. Answer my question.

9 MR. TALENT: Well, I think the chilling effect is a  
10 factual matter, and the record doesn't support that there is  
11 actually major chilling effect.

12 THE COURT: We can both understand if we have a  
13 governmental or subdivision of a state entity, i.e, state  
14 patrol who have officers who commonly work with federal  
15 agents, and some of which are deputized in a way to give them  
16 some level of federal authority, and now we know that that  
17 highway or state department they didn't do it because they  
18 could be held liable. Is that not true?

19 MR. TALENT: Under SAPA, yes.

20 THE COURT: So we could agree notwithstanding having  
21 the data, now you're gonna have officers who normally would  
22 unable to do it for the fear of the scheme set up by SAPA that  
23 somehow you are going to be penalized or fined up to \$50,000,  
24 is that not the case?

25 MR. TALENT: The subdivision could be, but that is a  
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1 constitutional question whether Missouri can implement that  
2 policy.

3 THE COURT: Right.

4 MR. TALENT: There is nothing preventing the federal  
5 government from filling any gap left by the highway patrol or  
6 local law enforcement from cooperating with the federal  
7 government. Nothing prevents the federal government from  
8 devoting all the resources it wants into the --

9 THE COURT: Say that again. I think this whole  
10 statute prevents you from cooperating?

11 MR. TALENT: And that is Missouri's right under  
12 Printz, Your Honor. The Printz says the degree of cooperation  
13 is left up to the states. To quote from Printz as Madison  
14 expressed it, this is Printz quoting federalists 39, "The  
15 local and municipal authorities from distinctive and  
16 independent portions of the supremacy no more subject within  
17 the respective spheres to the general authority, than the  
18 general authority is subject to them within their own  
19 spheres." The nullification question that the government has  
20 deposited here, from their exhibit, Exhibit 5, nullification  
21 is the claim that federal law is void and that no entity  
22 including the federal government can force it in a state.  
23 That's how they define it in the exhibit that they provided to  
24 this Court. Before SAPA, what happened was the federal  
25 government could enforce federal law in the state of Missouri  
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1 using as many RSV federal resources as it wanted to. After  
2 SAPA, the federal government can still enforce federal  
3 firearms law in the state of Missouri using as many or as few  
4 federal resources as it wants to.

5 THE COURT: What about the argument that the USA  
6 makes with regard to -- they are talking about the remedies  
7 tangible effects, right?

8 MR. TALENT: Yes, sir.

9 THE COURT: What are you thoughts on those?

10 MR. TALENT: Well, I think --

11 THE COURT: -- meaning, hey, you only can enforce  
12 certain things. There is not the cooperation with collecting  
13 information and data and those sort of things that would  
14 impact may be larger and greater than the state of Missouri,  
15 but you're unable to do those things.

16 MR. TALENT: The federal government can enforce  
17 federal firearms law all it wants, it's just not getting the  
18 cooperation from the state of Missouri to the same extent that  
19 it was before. I think it's worth pointing out that the  
20 record does not support this great, grand tangible kind of sky  
21 is falling affect. Their is still cooperation. All the  
22 declarations still pop a note that there is still some degree  
23 of cooperation between the federal government and the state.

24 THE COURT: Hold on, it's got to be cooperation  
25 first that -- it can't be cooperation related to any thing

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1 federal law, stamps, imposed firearms -- there is a long list.  
2 So it has to be cooperation not related to those things which  
3 seems very encompassing, to be honest, it's very encompassing.  
4 And I don't know what the narrowness of that would be, maybe  
5 you have an example of it. I can't think of one, maybe you  
6 can. But that has to be very narrow to the level of  
7 cooperation, would you not agree with me on that? I mean,  
8 that goes right to what the statute was trying to do. I mean,  
9 it wouldn't be -- I mean, right now it's saying level of  
10 cooperation with the federal agents enforcing --

11 MR. TALENT: And the level of cooperation by the  
12 Missouri state entities is left to the sound discretion of the  
13 state of Missouri under Printz.

14 THE COURT: Right.

15 MR. TALENT: Because SAPA does not tell the federal  
16 government you can't enforce our federal law --

17 THE COURT: It doesn't matter, it could be some or  
18 no cooperation?

19 MR. TALENT: That's correct. Under Printz it is up  
20 to the state's discretion. That's entirely true, Your Honor.  
21 That's why there is no Supremacy Clause problem. Because SAPA  
22 is a regulation, it's a declaration, an implementation of  
23 Missouri's policy to protect the fundamental right of law  
24 abiding citizens to keep and bear arms. And I know Your Honor  
25 said this is a Second Amendment case, we aren't debating any

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1 particular aspects of any federal firearms law or state law,  
2 but the Second Amendment does lure in the background here.

3 THE COURT: Is it about the Second Amendment?

4 MR. TALENT: It's Missouri's policy and  
5 interpretation of the Second Amendment.

6 Now, I think in this case it's worth while to point  
7 out that Missouri's policy and interpretation of the Second  
8 Amendment as a fundamental right of the state constitution  
9 references it as unamiable and shall not be questioned. It is  
10 consistent how the US Supreme Court just interrupted the law  
11 in Broom as right on par with the right for free speech, free  
12 exercise and to confront one's accuser. And what Printz says  
13 is that Missouri is allowed to implement its policy, its  
14 policy, its policy relating to the Second Amendment, and it  
15 does so through the last five sections of SAPA. Missouri is  
16 allowed to implement that and to prevent and to prohibit its  
17 state resources from going to enforce and implement federal  
18 policy relating to firearms that the state finds  
19 objectionable. That is not just by the way a merits issue,  
20 this also gets to the issue of injury and fact as to standing.  
21 And we talked a little bit about this here.

22 THE COURT: Right.

23 MR. TALENT: The government does not have a right to  
24 these state resources. Missouri's level of cooperation -- the  
25 government doesn't cite to any statute provision or anything

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1 like that that gives it a right to these resources. It relies  
2 solely on the Supremacy Clause which the Supreme Court in  
3 Armstrong said is not a source of right, it's a rule of  
4 decision for this Court and for the courts across the country.  
5 So the level of cooperation from the state of Missouri is  
6 voluntary because the government doesn't have a right to these  
7 resources. It doesn't have a right to man power from the  
8 Missouri State Highway Patrol for Missouri political entities.  
9 To implement data or information in a timely fashion or in a  
10 procedure the government likes. There's no cognizable injury  
11 here. And therefore, there is not an injury in fact.

12 The standing issue though, there was a lot of  
13 discussion up here about Sections 1460 and 1470. The injury,  
14 in fact, I think is fairly straightforward. There's a second  
15 defect in the government's jurisdiction regarding traceability  
16 and redressability. As I pointed out Sections 1.460 and 1.470  
17 apply to state political entities and subdivisions. And  
18 again, that's our statutory interpretation, but it's also the  
19 construction of the Missouri Supreme Court has put on the  
20 stature. So it's authoritative and binding here. The  
21 government sues the state of Missouri, sues the governor of  
22 the state of Missouri, and sues the Attorney General. On the  
23 Eighth Circuit precedent, Calzone v. Hawley, Digital  
24 Recognition Networking v. Hutchinson, I think two of the main  
25 ones, establishes that the governor and attorney general by  
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1 their general enforcement authority do not have the requisite  
2 direct connection to enforcement sufficient to establish  
3 traceability and redressability. Calzone I think is notable  
4 because that involved a suit regarding a law implected  
5 expressly by the Missouri State Highway Patrol. The plaintiff  
6 their sued the superintendent of the Highway Patrol, the  
7 governor and the Attorney General.

8 THE COURT: I'm going to back you up again. I know  
9 we're going to standing issue but I want to talk a little bit  
10 more about a couple things.

11 MR. TALENT: Of course.

12 THE COURT: And I'm trying to get your perspective  
13 when the United States, they talk specifically about the  
14 National Firearms Act and the Gun Control Act of 1968. To me,  
15 and maybe I'm wrong, and counsel maybe will correct me. That  
16 seems to be the impact of what House Bill 85 usurps in terms  
17 of not allowing the federal government and the law that  
18 controls that to enforce that. Does that make sense?

19 MR. TALENT: I think that is what the United States  
20 says.

21 THE COURT: Yes. Yes. So I want to hear your  
22 thoughts on that.

23 MR. TALENT: This gets back to what SAPA does. And  
24 I think you referenced tangible effects, facts in the record,  
25 I think the best thing to do is when the government says SAPA  
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1 prevents enforcement of the law, I think the thing to point  
2 out is in the facts that they provide. The federal government  
3 is enforcing the law, prosecution is happening, the federal  
4 government is arresting people for federal gun crimes. My  
5 friend came up here and cited cases from the Eastern District  
6 and the Western District. I think one was Thomas v. United  
7 States. I don't remember off the top of my head, I skimmed  
8 them too. Those involve gun prosecutions, I think felon in  
9 possession charges. Enforcement is happening and the federal  
10 government is allowed to enforce its law. What SAPA does is  
11 it says the state will not aid the federal government in  
12 enforcing these categories of law. And that's it, it's a  
13 cooperation provision, so it falls squarely within Printz.

14 THE COURT: And one last thing, you know, your time  
15 is running a little short and partially fault getting you off  
16 track.

17 Talk about this doctrine of intergovernmental  
18 immunity. Are you familiar with that?

19 MR. TALENT: I am, Your Honor.

20 THE COURT: Let's talk about that. Let me hear your  
21 position with respect to that.

22 MR. TALENT: Sure. So that is also answered fully  
23 by the fact that SAPA does not actually regulate the federal  
24 government. It doesn't discriminate against the federal  
25 government. It is set at a level of which Missouri state

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1 resources could go to aiding the federal government and  
2 enforcing federal law in policy. That is squarely within  
3 Printz, and because it is squarely within Printz there is not  
4 intergovernmental immunity issue.

5 This also gets I think to kind of a question you  
6 asked earlier something my friend on the other side said about  
7 1460 and 1470, and I think this tailors it in to I think the  
8 standing argument as well. 1460 and 1470 do not penalize  
9 federal entities. They don't penalize third parties. So  
10 United States v. Washington involved third parties who  
11 contracted with the government. 1460 and 1470 involve state  
12 entities, and put a penalty on state entities who violate the  
13 -- who violate Section 1.420 who employ individuals who  
14 knowingly violates the law. It's kind of a kin, I think, you  
15 can maybe draw a line or analogy at least to the idea of  
16 municipal liability in the context of 1983. It's just a way  
17 to do that, and SAPA does that. Because SAPA is about  
18 calibrating that level of cooperation that falls within  
19 Printz.

20 THE COURT: And my understanding -- and then I'll  
21 have counsel address this. When counsel kind of names those  
22 three or identifies those three areas, how the doctrine of  
23 intergovernmental immunity kind of plays out. One, the  
24 argument is with federal officers and this civil penalty  
25 scheme. But you would suggest it doesn't limit that?

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1           MR. TALENT: No, Your Honor. It's a civil penalties  
2 scheme on state entities.

3           THE COURT: On state entities. And to the extent  
4 that -- let's say, this has been my example, the highway  
5 patrol and deputizing, for lack of a better word, those agents  
6 who serve that dual role, they just don't provide those sort  
7 of resources so it doesn't impact right? That would be your  
8 argument, it doesn't penalize federal officers?

9           MR. TALENT: It doesn't, no, Your Honor.

10          THE COURT: It may prevent some from aiding and  
11 assisting, but it doesn't penalize?

12          MR. TALENT: That's right, Your Honor. I think --

13          THE COURT: I just want to make or correct me.

14          MR. TALENT: Yes.

15                So a case that falls squarely within Printz, I don't  
16 think violates under governmental immunity because there is no  
17 Supremacy Clause problem. But these further defects here, I  
18 think you are kind of getting at this issue. The government  
19 brings a facial attack on the statute. The civil penalty  
20 provisions involve local political subdivisions, and to the  
21 extent they touch on federal officers or employees, they touch  
22 on political subdivision and entities who hire those  
23 employees. The federal government doesn't have standing to  
24 raise any claims about the civil liabilities as opposed on  
25 political subdivisions and entities, that's an issue for them.

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1 And the government doesn't claim third-party standing to do  
2 that either. As for the former governmental employees, the  
3 government doesn't cite any interest it has in the future  
4 employment of its individuals. And secondly, the cases the  
5 government cites for that proposition, I think Davis v.  
6 Michigan State Treasury Department and Tiffany v. Meyers, the  
7 former, the former governmental employee was the one that  
8 brought the suit. So this kind of gets at this issue with  
9 this whole lawsuit here. The government wants this Court to  
10 rule on an abstract question of law. Is SAPA constitutional?  
11 Well, after the Missouri Supreme Court has come in and agreed  
12 with the state's interpretation of the law --

13 THE COURT: What does the Missouri Supreme Court  
14 said about this?

15 MR. TALENT: The City of St. Louis. It agrees with  
16 the state's interpretation. The first four provisions are  
17 declaratory. The last five regulate Missouri entities only.  
18 It doesn't regulate the federal government, it doesn't impose  
19 a duty on the federal government. It doesn't allow -- it is  
20 exactly what the state has said the law means. And it's an  
21 authoritative instruction. So we are here with a very  
22 abstract of law. And it's abstract both because the Missouri  
23 Supreme Court has settled the main issue here, which is does  
24 SAPA prevent the federal government from enforcing federal law  
25 and it said no. So the main issue of the government's case is  
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1 abstract, going to the traceability and-redressability  
2 standpoint, the government would never be an adverse litigant.  
3 And this also gets to your intergovernmental immunity  
4 question, Your Honor. The government under the scheme of the  
5 statute will never be an adverse litigant. It is state and  
6 local entities who will be defendants in lawsuits brought  
7 under 1.460 and 1.470. So this is a Muskrat case that we  
8 cite. So it's abstract in that sense. It's abstract in the  
9 sense, it's abstract in the sense that the individuals the  
10 federal government has sued don't have primary enforcement  
11 authority for this law. Again, I point this Court to Calzone,  
12 to Digital Recognition Network, as very, as good exemplars of  
13 the idea that the general executive and power of the Governor,  
14 the fact the Attorney General has a general duty to implement  
15 or enforce state law are not sufficient to establish that  
16 direct causation sufficient for Article III standing. It  
17 relates also to the idea of sovereign immunity and ex parte.  
18 And for that reason as well, it's not redressable. I would  
19 also end with the cause of action we can get to another level  
20 of abstraction here. The government has brought an equitable  
21 case to this Court. And equity -- pardon me, they also sue  
22 the state, but I glided over that so I'm moving a little  
23 quickly to be aware of the Court's time. They sued the state,  
24 but as kind of Black Letter law, you can't sue the state. You  
25 have to sue to enjoin officers from enforcing the law of the  
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1 state. You can't enjoin a statute. But this gets to the  
2 cause of action point. Recognize in the most recently Whole  
3 Women's Health, that the equitable jurisdiction of this Court  
4 extends only to causes of actions and forms of relief that  
5 were available at common law. What the Court noted in Whole  
6 Women's Health, this stretches back to Fitts v. McGhee, 1898,  
7 but the idea is that there is no law, there's no cause of  
8 action, equitable cause of action that would permit this Court  
9 to issue an injunction running to the Governor, running to the  
10 Attorney General, Whole Women's Health involve the Attorney  
11 General, that would also bind private parties who enforce a  
12 lawsuit. And it is the private parties that would impose any  
13 harm associated, any harm on the federal government. It is  
14 those private parties that impose a harm on the federal  
15 government and as the Eighth Circuit noted in Digital  
16 Recognition Network. The Governor and Attorney General do not  
17 have authority to enforce the Reader's System Act, just like  
18 the Governor and Attorney General don't enforce SAPA. So they  
19 do not cause injury to Digital Recognition Network here. The  
20 federal government, even assuming, right, all their injuries  
21 are cognizable. The Act provides for enforcement only through  
22 private actions for damages. Digital Recognitions injury,  
23 here the federal government, is fairly traceable only to the  
24 private civil litigants who may seek damages under the Act,  
25 and thereby enforce the statutes.

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1 THE COURT: Okay. That's time.

2 The Court is going to take a brief recess and I'll  
3 come back and then give the parties the opportunity to  
4 respond. I may have a few more questions at that time.

5 (THEREUPON, a short recess was had; WHEREUPON, the following  
6 proceedings were had.)

7 THE COURT: Okay.

8 Ms. Snyder, my first question is this. Maybe I'm  
9 not understanding and maybe I need to go review what the  
10 Missouri Supreme Court said. What is your interpretation of  
11 what the Missouri Supreme Court has already said and the  
12 impact that it will have on maybe what this Court does or does  
13 not do?

14 MS. SNYDER: That decision should not impact this  
15 Court's decision.

16 THE COURT: What did the Supreme Court say?

17 MS. SNYDER: The Supreme Court did not consider H.B.  
18 85 on the merits. It remanded for the trial court to consider  
19 on the first instance. The trial court had initially  
20 dismissed on procedural grounds unrelated to this case. The  
21 Missouri Supreme Court in its background section did describe  
22 the first half of H.B. 85 as being declaratory legislature  
23 findings, and then the second half as being the substantive  
24 enforcement provisions. It is unclear if that was actually  
25 meant as a holding, given that of course, they remanded

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1 without considering the merits. And even to the extent that  
2 it was a holding, it was Dicta, because it didn't go to the  
3 merits of the ultimate decision of that case. And we know  
4 from binding Eighth Circuit and Supreme Court precedent that  
5 Dicta even from a state's highest court interpreting state law  
6 is still merely persuasive. And here we know that these  
7 provisions are far more than declaratory because they have all  
8 of these tangible harms. We also know that these harms are  
9 extending to federal authority.

10 THE COURT: Okay. And it seems like the state of  
11 Missouri is suggesting that the United States doesn't have  
12 standing. They're suggesting their standing comes from, hey,  
13 we have to work harder doing our job now.

14 MS. SNYDER: That's definitely not true, Your Honor.

15 THE COURT: And maybe he didn't say that  
16 necessarily, but I kind of take it as, hey, we got to work  
17 harder. How do you have standing in this case?

18 MS. SNYDER: We have standing because the United  
19 States is the target of this law. The United States is being  
20 directly harmed by this law. I think a good example is to  
21 consider if there were a similar law passed targeting a  
22 corporation in a similar way, telling other entities you  
23 cannot contract with this corporation, if you hire people from  
24 this corporation we are going to penalize you. That  
25 corporation would certainly have standing. And in this case

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1 Missouri is implementing and enforcing H.B. 85 that is having  
2 tangible harms on the United States. Multiple courts have  
3 confirmed that the United States has standing to challenge  
4 state laws that are affirmatively interfering with the  
5 accomplishment of federal authority.

6 THE COURT: The argument may be and I'll know for  
7 sure when counsel comes up, what is it inhibiting the federal  
8 government from doing?

9 MS. SNYDER: I think that defendants are really  
10 trying to make this case about Printz.

11 THE COURT: I noticed that. I need to get a full  
12 understanding of that case. Go ahead, please.

13 MS. SNYDER: They're really trying to argue this is  
14 just a lack of cooperation. It's just the state refusing to  
15 dedicate state resources. This case is not about Printz.  
16 This case is not about the Tenth Amendment at all. This case  
17 is about a state law that has not only purported to nullify  
18 federal law, but also affirmatively penalizes federal  
19 authority, interferes with federal authority, discriminates  
20 against federal authority.

21 THE COURT: But you know what Mr. Talent would say  
22 as to that argument?

23 MS. SNYDER: That it's still cooperation. It's not  
24 just about cooperation.

25 THE COURT: Because it doesn't penalize federal  
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1 agents, nor does it prohibit you from doing anything or  
2 otherwise. It makes it harder.

3 MS. SNYDER: Even if we take Missouri's argument as  
4 true that it only applies to state and local entities, we are  
5 still seeing the tangible effects that this has on -- again,  
6 task force officers, the discriminatory refusal to provide  
7 information. This isn't just about Missouri not providing  
8 information. This is about Missouri targeting the federal  
9 government and saying because you are the federal government  
10 we will not provide information to you, we will not cooperate  
11 with you. And we saw, again, we saw the doctrine of  
12 intergovernmental immunity recently reaffirmed by the Supreme  
13 Court just a couple weeks ago. If you target, if there is a  
14 state law that targets federal authority or targets a federal  
15 person or a federal entity based on their federal status, that  
16 is illegal, that is unconstitutional. That is exactly what  
17 the state is doing here.

18 THE COURT: And I will let you continue with any  
19 comments you may want to make without interruption so you can  
20 make any points that you want to with your remaining time.

21 MS. SNYDER: I have really touched on many of my  
22 points, but I'd like to also talk about the tangible harms.  
23 Just because the federal law-enforcement in Missouri is still  
24 able to effectuate some arrests, some prosecutions, does not  
25 mean that the United States has no harm. We've talked about  
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1 our tangible effects, they do not contest those facts. Those  
2 facts stand for themselves. Again, I don't want to  
3 reiterate --

4 THE COURT: -- He tried to a little bit, but I get  
5 it. Mr. Talent, he's like, okay Judge, that's okay. It  
6 doesn't penalize them, it just says we don't have to. Maybe  
7 he is relying again on the case of Printz to say, okay.

8 MS. SNYDER: Much of the state's argument is based  
9 on the fact that, for example, the civil penalty provisions  
10 don't apply directly to federal officials. But as Your Honor  
11 pointed out, these penalty provisions still regulate and still  
12 discriminate against and effect federal authority. And that  
13 is the problem here. Even taking as true Missouri statement  
14 that these only apply to state and local entities, you are  
15 still having these tangible harms against federal authority.

16 THE COURT: Okay.

17 MS. SNYDER: I'd also like to briefly mention  
18 standing. I'm happy to talk about it more now. I know we  
19 didn't get to discuss it in our initial discussion. Missouri  
20 mentioned Calzone. Calzone affirms our position that we have  
21 standing here. Calzone involves a plaintiff who sued Missouri  
22 State Highway Patrol, and she had standing because the  
23 superintendent of the Missouri State Highway Patrol was  
24 implementing that statute. The same goes here, Missouri and  
25 its officials are implementing H.B. 85 so we have standing on  
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1 that alone.

2 Again, standing is also confirmed by both the recent  
3 case in the United States v. Washington from a couple weeks  
4 ago, also from the 2012 decision from the Supreme Court in the  
5 United States v. Arizona. There was not standing problem in  
6 these cases. These were exclusively cases brought under the  
7 Supremacy Clause, very similar essentially the same posture as  
8 here. The Supreme Court considered no problem with standing.  
9 So the state's position here means that the Supreme Court  
10 necessarily ruled incorrectly in those decisions.

11 THE COURT: Okay.

12 MS. SNYDER: I'm happy to for go the rest of my time  
13 unless you have any further questions.

14 THE COURT: Not at this time.

15 Mr. Talent.

16 And Mr. Talent, on your way up I'm going to shoot a  
17 question to you.

18 MR. TALENT: Please do.

19 THE COURT: The United States -- Ms. Snyder seems to  
20 have a disagreement. And I just want to be clear and I'll go  
21 back and look what the Missouri Supreme Court, what you  
22 believe it stands for, if anything, that would impact maybe  
23 what I do here today.

24 MR. TALENT: So two answers to that. The first, I  
25 will concede that the discussion of SAPA, it's two paragraphs.  
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1           THE COURT: How long is the opinion? You said it's  
2 two paragraphs?

3           MR. TALENT: Yes. She is correct that it is in the  
4 factual and background section.

5           THE COURT: Okay.

6           MR. TALENT: I just find it very hard to believe  
7 that the Missouri Supreme Court is misstating Missouri law in  
8 its factual and background section. And I'm not going to  
9 casually believe that is the case.

10           My friend on the other side references Dicta,  
11 perhaps it's Dicta. It's very persuasive, it's consistent  
12 with the text context as the state has pointed out its  
13 briefing. To call this Dicta brings to mind a statement by  
14 Judge Hill in the Fifth Circuit concurring in Williams v.  
15 Simonbach. That's not a drive-by, that's sitting down  
16 ordering cocktails, having a full meal and getting dessert.  
17 That's fairly a detailed line by line, section by section  
18 discussion of the law. That tracks by the way the text and  
19 context of the law. I think it is very odd that the  
20 government is pushing an interpretation of SAPA that would  
21 render it unconstitutional. That -- they are trying to tell  
22 this Court that this law means something different from what  
23 the Attorney General's office is telling this Court it means.  
24 That it means something very different from the Missouri  
25 Supreme Court means. That therefore, because it means what  
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1 the government says it means, it's unconstitutional, it's a  
2 black letter candid interpretation that courts read statutes  
3 to avoid constitutional infirmity. The government I think can  
4 see at the end of the day that if SAPA does what the Missouri  
5 Supreme Court says it does, what the state says it does here,  
6 it's entirely consistent with Printz. This is a Printz case.  
7 I think the best way to show that this is a Printz case, is to  
8 grab a little bit with these tangible harms the government  
9 discusses. What is in the record is that the tangible harms  
10 stem from the fact that Missouri law enforcement is not  
11 cooperating with the federal government to the same level it  
12 did before SAPA. An injunction to remedy those harms, right?  
13 The actual injunction that would remedy those harms would  
14 basically be to order state of Missouri to cooperate with the  
15 federal government at the same level as it was doing before.  
16 That is exactly what the Court said is unconstitutional in  
17 Printz, that trenches -- if the federal government does it.  
18 That trenches on the states' rights under the Tenth Amendment  
19 under the federal Constitution. So even spotting the tangible  
20 harms, I think the tangible harms in the case, I think it just  
21 simply illustrates that this is about state cooperation with  
22 the federal government and so therefore Printz is fully  
23 controlling.

24 I'd like to point out again, going back to the  
25 enforcement, the public safety side of this, these tangible  
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1 harms. My friend on the other side she just came up here and  
2 told you there are still -- the federal government still  
3 enforcing federal law in the state of Missouri. That is not  
4 nullification. Nullification is what she said earlier, the  
5 federal government cannot enforce federal law in the state of  
6 Missouri. That is not what SAPA does.

7 THE COURT: What about this notion that the state of  
8 Missouri is just or the statute is just targeting the federal  
9 government or the federal authority. I think I know your  
10 answer, but go ahead.

11 MR. TALENT: Two responses. One is it's not. It  
12 explicitly references and regulates state level entities. To  
13 the extent federal law and federal regulation, and federal --  
14 the stuff in Section 1.470, about individuals who enforce  
15 federal law and violation of the law, that is what I think she  
16 is referencing as well. There is really only two  
17 jurisdictions that enforce any type of gun law in the state of  
18 Missouri and it's the federal government and the state of  
19 Missouri. I don't know how else you would draw this law. The  
20 targeting is just a reference to the basic reality of who  
21 enforces a law in the state of Missouri. The federal  
22 government is enforcing that law so there is no nullification  
23 issue here at all. Happy to answer any other questions on  
24 that as well.

25 THE COURT: Nope.  
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1           MR. TALENT: I think my friend on the other side,  
2 and I want to get a little into standing. She discussed  
3 Calzone, saying that it affirms her case. She did not discuss  
4 a portion of Calzone saying that the Governor's standing, that  
5 standing to sue the Governor and standing to sue the Attorney  
6 General on the theory that they have some role in enforcing  
7 the law. That there is no traceability and no redressability.  
8 And so no standing to seek an injunction or declaration  
9 against those entities. That is what lawsuit is about. They  
10 are not suing the people who have primary enforcement of SAPA  
11 under 1.460 and 1.470. They are suing individuals -- that is  
12 a private parties. They are suing the state level actors.  
13 Her argument that because the Governor and the Attorney  
14 General has some implementation authority in general is  
15 sufficient to establish standing, was explicitly rejected in  
16 Calzone, explicitly rejected in Digital Recognition Network,  
17 explicitly rejected in many other cases as well. So the  
18 government simply fails to address that aspect of the  
19 enforcement provision of SAPA, and therefore, fails to a  
20 stress and establish its standing. And fails to establish as  
21 I pointed out earlier an equitable cause of action.

22           I think at the end of the day -- I'm happy to answer  
23 any other questions. But I think the best way to end is  
24 actually with what the Eighth Circuit said in Digital  
25 Recognition Network which quoting *Fitts v. McGhee* said that,  
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1 "It would be a very convenient way for obtaining a speedy  
2 judicial determination of questions of constitutional law  
3 which may be raised by individuals, but it is a mode which  
4 cannot be applied to the states of the union consistently.  
5 But the fundamental principle that they cannot without their  
6 assent be brought into court at the suit of private persons."

7 Now, the federal government is different. It's not  
8 a private person. But the logic of that quote that a claim  
9 that because of an executive authority has some general  
10 implementation authority is sufficient to establish Article  
11 III standing, opens up the Court to opine on abstract  
12 questions of the constitutionality of the statute and the  
13 absence of concrete facts. That is exactly what this case is.  
14 The federal government doesn't point to any particular action  
15 that a Missouri officer has done under SAPA that they say  
16 actually does violate constitutional law, they say SAPA in  
17 total is unconstitutional. It's simply not the case,  
18 inconsistent with the reading of the law. It's a very  
19 abstract kind of constitutional issue that it is asking this  
20 Court to address, which means there is no Article III  
21 standing.

22 I'm happy to answer any further questions you may  
23 have.

24 THE COURT: I don't have any further questions. You  
25 know, I certainly appreciate the argument of counsel.

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1 Certainly the Court will have to do its due diligence and then  
2 I'll take the matter under advisement.

3 Let me ask this question, and maybe this is a moot  
4 issue. You know, I think I'll reserve comment on it for now,  
5 and if I need to get the parties on the phone to address it  
6 I'll do so. But I do appreciate the argument of counsel and  
7 the Court is going to take this matter under advisement.  
8 (THEREUPON, the following proceedings were adjourned.)

9  
10 CERTIFICATE

11  
12 I certify that the foregoing is a correct transcript  
13 from the record of the proceedings in the above-entitled  
14 matter.

15 September 22, 2022

16  
17 /s/ Denise C. Halasey  
18 Denise C. Halasey, CCR, CVR-CM, RVR  
United States Court Reporter

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